

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,824

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a fifty-one-year-old woman who has a ninth grade education. She has a thirty-four year work history, much of it as a packer in a factory, and, most recently, a ten year stint as a clerk in a retail store where she was required to be on her feet most of the time. She left her last job due to her medical problems.
2. In October of 1994, the petitioner was admitted to the hospital for pain in her left hip. The pain was described by her physicians as severe and accompanied by "copious vomiting and nausea". Laboratory tests and consultations with specialists revealed that the petitioner has sciatic neuropathy, reflex sympathetic dystrophy as a residual of childhood polio and chronic pain syndrome. She has been treated with pain medications with little or no relief since that time.
3. The petitioner also has emphysema which restricts her with regard to working around dust and gases. She stopped smoking over two years ago but continues to suffer the effects of this disease.
4. The petitioner was an active person before the onset of this condition two years ago. She used to bike ride, walk up and down stairs and work fifteen to sixteen hour days. Now she is barely able to walk (she does so with a limp) and is frequently exhausted from pain which interferes with her sleep.
5. Her current treating physician has stated recently that the petitioner continues to have chronic left leg pain and signs of reflex sympathetic dystrophy as a result of a history of polio as a child. He states that the onset of this problem was October of 1994 and he is uncertain how long this syndrome will last. He specifically states that it prevents her from being on her feet or walking for any period of time. She can

occasionally lift less than ten pounds and is unable to lift any weight on a frequent basis. He believes she is limited in her ability to walk, stand, push and pull and may never climb, balance, stoop, kneel, crouch or crawl. He states that she has chronic pain in the left leg and hip and a slight decrease in range of motion and strength. Her emphysema causes her to wheeze upon exposure to dust. The petitioner's physician's opinion as set forth in this paragraph is given great weight, is uncontroverted by any substantial evidence and is found to accurately reflect the petitioner's condition.

ORDER

The decision of the Department is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner cannot return to her prior job because it requires considerable standing and walking. The facts indicate that the petitioner most optimistically could perform only sedentary work.⁽¹⁾ Under the medical-vocational guidelines, a fifty-one year old person (defined as a person closely approaching advanced age), with a limited education (less than high school) and an unskilled work history who is limited to sedentary work, is categorized as disabled. 20 C.F.R. § 404, Subpart P, Appendix II, Rules 201.09 and 201.10. Therefore, the Department's decision is reversed.

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1. Sedentary work is defined as work which "involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 416.967(a)